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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 DEANDRE SPENCER COTTON,
13 Defendant.

2:15-cr-00094-LDG-VCF
ORDER

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15 The court has reviewed the magistrate judge's report and recommendation of September
16 23, 2016 (#97), defendant Cotton's objections (#106, and the government's response to those
17 objections (#109). The court determines that the report and recommendation should be adopted.

18 Cotton claims that he is entitled to continuance of his hearing in order to locate several
19 witnesses, including the passenger of his vehicle when it was stopped. Cotton claims that the
20 passenger would corroborate his testimony that he did not commit a traffic violation and that the
21 smell of marijuana was not emanating from the car, which justified the search. The magistrate
22 judge was correct in applying the Flynt factors to determine if a continuance should be granted.
23 As the magistrate judge noted, a number of attempts by the U.S. Marshal's Service and possibly
24 even Cotton's own investigator failed to make contact with the witnesses.

25 The magistrate judge also was correct in determining that the initial stop of Cotton's
26 vehicle was justified. The magistrate judge concluded that Officer Ruzicka's testimony was

1 credible. Officer Ruzicka testified that Cotton made an illegal lane change, which justified the
2 initial stop. Cotton's actions in glancing at and watching Officer Ruzicka and his vehicle, along
3 with Cotton's maneuvering of his vehicle, provided grounds for Officer Ruzicka to conduct an
4 investigatory stop.

5 Upon stopping Cotton's car, Officer Ruzicka testified that he smelled the pungent odor of
6 marijuana emanating from the vehicle. As the magistrate judge properly found, this, taken
7 together with Cotton's previous actions, provided the police with the cause necessary to search
8 Cotton's car. During the hearing, Officer Ruzicka was presented with the confiscated bag of
9 marijuana and repeated his testimony that it had the strong odor of marijuana. The magistrate
10 judge discounted that testimony upon smelling the bag of marijuana himself. He concluded,
11 however, that the overstatement of Officer Ruzicka's testimony regarding the strength of the odor
12 of marijuana did not undermine his testimony in general. The magistrate judge was able to
13 observe Officer Ruzicka as he testified, and did not commit error in concluding that Officer
14 Ruzicka's credibility had not been materially damaged by the overdrawn observation. Finally, the
15 magistrate judge's analysis regarding probable cause in the face of Nevada's medical marijuana
16 statute is sound under the circumstances of this case.

17 THE COURT HEREBY ADOPTS the magistrate judge's report and recommendation
18 (#97), and orders that defendant Cotton's motion to suppress (#42) is DENIED.

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DATED this 8th/17 day of November, 2016.

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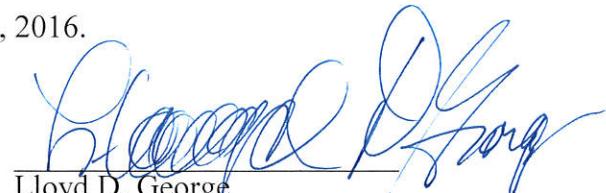
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Lloyd D. George
United States District Judge